

III. REMARKS

The Examiner rejected claims 41-47 and 51-68 under 35 U.S.C. 112 paragraph 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner contends that the restraining and support members lack a proper antecedent basis in the specification. Applicant respectfully disagrees.

According to MPEP 2173.05(e) (Lack of Antecedent Basis), a "claim is indefinite when it contains words or phrases whose meaning is unclear.... Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. **Energizer Holdings Inc. v. Int'l Trade Comm'n**, 435 F.3d 1366, 77 USPQ2d 1625 (Fed. Cir. 2006)(holding that "anode gel" provided by implication the antecedent basis for "zinc anode"); **Ex parte Porter**, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface. See **Bose Corp. v. JBL, Inc.**, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir 2001) (holding that recitation of "an ellipse" provided antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter")." Moreover, the "mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision."

The Examiner previously indicated that the claim elements were readily ascertainable. Furthermore, in order to meet the adequate written description requirement, the applicant does not have to utilize any particular form of disclosure to describe the subject matter claimed, but "the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed." **In re Hayes Microcomputer Prod. Inc.**, 982 F.2d 1527, 1533-35, 25 U.S.P.Q.2d 1241, 1245-46 (Fed. Cir. 1992). See also **Purdue Pharma L.P. v. Fauling Inc.**, 230 F.3d 1320, 1322, 56 U.S. P.Q. 2d 1481 (Fed. Cir. 2000). The specification does not have to describe the invention using the

same words as those used in the claims, as long as the skilled reader understands that the text, taken as a whole, conveys the same meaning. The reader of the specification would know immediately the structure needed to support and retain the portable dwelling of the present invention as the Applicant specifically refers to it as a tent throughout the specification. Those of ordinary skill in the art would understand the elements that comprise a tent.

As commonly quoted, an applicant's "specification need not describe the claimed invention in *ipsis verbis* to comply with the written description requirement." ***Ex parte Sorenson***, 3 U.S.P.Q.2d 1462, 1463 (Bd. Pat. App. & Interf. 1987) (reversal of 35 U.S.C. §112, ¶1 rejection of claims because one skilled in the art would have understood "imines" to have been intended for "amines" even though specification did not say so), citing ***In re Edwards***, 568 F.2d 1349, 196 U.S.P.Q. 465 (C.C.P.A. 1978) (reversal of rejection of claims for polyol under 35 U.S.C. §112, ¶1, because application entitled to filing date of parent application even though parent does not name the compound in *ipsis verbis*, since the "parent application provides adequate direction which reasonably leads persons skilled in the art to the later claimed compound." 568 F.2d at 1352, 196 U.S.P.Q. at 467); see also ***Application of Eickmeyer***, 602 F.2d 974, 982, 202 U.S.P.Q. 655, 663 (C.C.P.A. 1979) (reversal of 35 U.S.C. §112, ¶1 rejection on the basis that limitation "at an elevated temperature of at least about 56° C" is "fully described" in the specification and its parent applications).

IV. CONCLUSION

In view of the above, Claims 69-103 are pending and it is respectfully submitted that all of the pending claims in this application are in condition for allowance. Favorable action on this application is, therefore, solicited.

Respectfully submitted,

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